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Report of the Special Rapporteur in the field of cultural rights

Note by the Secretariat

The Special Rapporteur in the field of cultural rights, Karima Bennoune, submits the present report in accordance with Human Rights Council resolution 19/6. Since the Special Rapporteur commenced her mandate on 1 November 2015, the report is preliminary in nature, reflecting on the valuable work undertaken by the previous mandate holder and highlighting priority areas in which she believes further advances should be made.

In the report, the Special Rapporteur also introduces the issue that will constitute the focus of her first report to the General Assembly: the intentional destruction of cultural heritage as a violation of human rights.

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I. Introduction

1. In 2009, the Human Rights Council, in its resolution 10/23, established the mandate of the independent expert in the field of cultural rights. The mandate was extended in 2012 through resolution 19/6 in which the Council conferred on the mandate holder the status of Special Rapporteur in the field of cultural rights. The mandate was again extended in 2015 for a period of three years through resolution 28/9. On 2 October 2015, Karima Bennoune was appointed to fill this post following the completion of the second term of Farida Shaheed.

2. The present report, which is introductory, reflects on the valuable work undertaken from 2009 to 2015 by the previous mandate holder and begins the process of building on that foundation. It highlights priority areas in which the Special Rapporteur believes further advances should be made.

II. Cultural rights: revisiting and reconfirming the conceptual and legal framework

3. In her first report to the Human Rights Council (A/HRC/14/36), Ms. Shaheed thoroughly mapped the conceptual and legal framework that grounds cultural rights. As the mandate has evolved considerably since then, the new Special Rapporteur would like to revisit this framework, reiterating key commitments and assessing emerging developments.

4. In 2010, the first Special Rapporteur noted that cultural rights have frequently been seen as underdeveloped relative to other human rights. Since then, she undertook many activities designed to improve the status of cultural rights, in keeping with the Council's repeated reaffirmations that "cultural rights are an integral part of human rights, which are universal, indivisible, interrelated and interdependent."

5. Today, it is fair to say that cultural rights have gained in legitimacy, although there remains much to be done to fulfil the Council's vision. Many people still think of cultural rights as a luxury. The Special Rapporteur hopes to continue demonstrating that cultural rights are key to the overall implementation of universal human rights and a crucial part of the responses to many current challenges, from conflict and post-conflict situations to discrimination and poverty. Cultural rights are transformative and empowering, providing important opportunities for the realization of other human rights. The lack of equal cultural rights, combined with economic and social inequalities, makes it difficult for people to enjoy personal autonomy, to exercise their civil and political rights and to enjoy their right to development.

6. The present section highlights the important advances made by the previous Special Rapporteur through a series of 10 thematic reports that explored the content of article 15 of the International Covenant on Economic, Social and Cultural Rights. The Special Rapporteur stresses the importance and richness of these reports, many findings of which she intends to rely on and explore further where relevant. Each report indicates further areas of study and many more issues remain to be addressed. In the sections below, the Special Rapporteur wishes to emphasize the definition of cultural rights proposed by her predecessor, to outline the legal basis for these rights and to describe their relationship with cultural diversity and the universality of human rights. She also addresses key methodological questions and identifies, on a preliminary basis, areas requiring further attention.

A. Definition of cultural rights: meaning and terminology

7. The Special Rapporteur recalls the definition of cultural rights used by the first mandate holder, based on academic research and general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life:[1]

> Cultural rights protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They may also be considered as protecting access to cultural heritage and resources that allow such identification and development processes to take place.[2]

8. The Special Rapporteur believes her predecessor made the correct decision when she declined to define culture, but took a holistic, inclusive approach to its meanings. Significantly, she stated that culture is created, contested and recreated within social praxis (see A/67/287, para. 2), in other words through human agency. The current Special Rapporteur further notes that: (a) all people and all peoples have culture, not merely certain categories or geographies of people; (b) cultures are human constructs constantly subject to reinterpretation; and (c) while it is customary to do so, referring to culture in the singular has problematic methodological and epistemological consequences. It must be understood that culture is always plural. "Culture" means cultures.

9. On many occasions, the first Special Rapporteur stressed that the purpose of the mandate is not to protect culture or cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life in a continuously developing manner. Based on the work undertaken by her predecessor, the Special Rapporteur understands cultural rights as protecting, in particular: (a) human creativity in all its diversity and the conditions for it to be exercised, developed and made accessible; (b) the free choice, expression and development of identities, which includes the right to choose not to be a part of particular collectives, as well as the right to change one's mind or exit a collective, and indeed to take part on an equal basis in the process of defining it; (c) the rights of individuals and groups to participate – or not to participate – in the cultural life of their choice and to conduct their own cultural practices; (d) their right to interact and exchange, regardless of group affiliation and of frontiers; (e) their rights to enjoy and have access to the arts, to knowledge, including scientific knowledge, and to their own cultural heritage, as well as that of others; and (e) their rights to participate in the interpretation, elaboration and development of cultural heritage and in the reformulation of their cultural identities. Article 27 of the Universal Declaration of Human Rights holds that "everyone has the right freely to participate in the cultural life of the community," which today must be understood to refer to the plural form "communities" (see A/HRC/14/36, para. 10).

10. The Special Rapporteur is of the view that the relationship between individuals and groups needs further exploration, as does the terminology used to refer to the latter. She recognizes that some groups are indeed deemed rights holders under human rights law. Notably, the importance of the collective exercise of cultural rights is stressed throughout the United Nations Declaration on the Rights of Indigenous Peoples. However, one difficulty of accurately describing human groups is their diverse typology, including inter

[1] General comment No. 21, para. 13.

[2] A/HRC/14/36, para. 9, and A/67/287, para. 7.

alia indigenous peoples, minorities within a population and new migrants, whose legal status, histories and relationship to States may differ.

11. It is important to query the precise meaning of terms such as "communities" and "identities" in the realm of cultural rights, which are frequently employed without definition. In international human rights instruments, "community" seems to refer to various interlocking groups, including: (a) the international community; (b) a national community; and (c) indigenous, tribal, minority, migrant, local or other communities formed in accordance with criteria such as language or ethnicity. Guidance as to which kind of category is under discussion is often implicit and contextual. Although some insight may be gained from commentaries on diverse standards, the Special Rapporteur has been unable to find a specific definition or authoritative explanation of the term "community" in international human rights law and proposes exploring further its meanings and implications.

12. Human rights law sometimes uses the term "community" in the relational sense, as well when stressing the importance for people of enjoying their rights either individually or "in community with others", such as their right to manifest religion or belief (art. 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights) or their rights as members of minorities, particularly in the fields of culture, religion and language (art. 27 of the Covenant and art. 3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities).

13. The centrality and meaning of group identities — and how to characterize them — are contested notions. What may be considered as "central" in terms of identity from the point of view of "community" leaders or outsiders may not coincide with individuals' choices and realities. Individuals identify themselves in numerous ways and may select one identity over others in particular interactions and engagements.

14. A key challenge that the Special Rapporteur sees in the field of cultural rights, beyond international norms, is the routine presumption of the primordial nature of community identities. The term "community" is too often assumed to suggest homogeneity, exclusivity, structure and formality. Such a construction is embraced not only by some outside observers not willing to recognize plurality and dynamism within groups, but also by often self-proclaimed "representatives" of the concerned groups — or presumed groups — themselves. This contributes to creating, continuing and legitimizing situations of oppression. Cultural rights should never be used to those ends.

15. Moreover, Hazem Sagieh and Saleh Bechir have argued that some especially large and heterogeneous groups labelled as "communities" in contemporary parlance are in their view "to a certain extent, a 'virtual reality' that exists above all in the minds of … politicians, 'experts' and journalists — and, of course, in the minds of their supposed and self-appointed 'spokesmen'".[3] In their view, this threatens the idea of citizenship. The vocabulary that they criticize and the associated world view has become the basis for "community-based" policy in many contexts and spheres, the impact of which the Special Rapporteur plans to investigate during her mandate.[4]

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[3] Hazem Sagieh and Saleh Bechir, "The 'Muslim community': a European invention", Open Democracy, 16 October 2005. Available at www.opendemocracy.net/conflict-terrorism/community_2928.jsp.

[4] She notes the concerns raised e.g. in Pragna Patel and Uditi Sen, *Cohesion, Faith and Gender: A Report on the Impact of the Cohesion and Faith-based Approach on Black and Minority Women in Ealing* (Southall Black Sisters, 2010).

16. Theorists such as the historian Lotte Hughes caution us not to "use the term 'community' uncritically".[5] The Special Rapporteur intends to heed such cautions, while fully respecting those group rights that are guaranteed in international law. As her predecessor did, she recognizes that "communities are run through with divergent interests … [and] thick seams of power that structure any given collection of people".[6] She hopes to problematize the term "community" along the lines of the critical conceptualization suggested by some cultural heritage experts: "one that engages with social relationships in all their messiness, taking account of action, process, power and change".[7] Hence, she will aim to use alternate terms like "group" and "collectivity" when possible and, where she refers to "community", to do so carefully.

17. The problem is, however, not only one of vocabulary but also of concept. The Special Rapporteur regards the assumption of "community" as one that can have positive consequences for securing the rights of individuals to enjoy and practise their culture with others and also as one that can pose a threat to the rights of dissenting or disempowered individuals within any of these groups and to social cohesion if carelessly applied. It can lead to what Amartya Sen has deplored as "plural monoculturalism"[8] rather than genuine pluralism, which is a key goal of cultural rights.

18. While the recognition of difference is important in the field of human rights, so is the recognition of commonality. We must not forget that one of the most important communities to which we all belong is "the human family". As Souleymane Bachir Diagne warned, "democracy is threatened by the fragmentation that produces the retreat into micro-identities and the resurgence of ethnicism".[9] In a world of increasing sectarianism, we need a vocabulary that respects diversities and recognizes power differentials and historical injustices, while still promoting the idea of living together in harmony or *vivre-ensemble*. Diversity must be inscribed in equality and solidarity and vice versa. Indeed, cultural rights are vital in this regard. As Elsa Stamatopoulou has noted, "were we to convince policy makers at the national and international level to actively and visibly pursue the promotion and protection of cultural rights, we would have certainly gone a long way … towards creating a *polis* where one would focus less on identities that divide us and more on the many cultures we share and enjoy".[10]

19. The Special Rapporteur has been particularly disturbed by recent political discourses of exclusion, sometimes directed at entire religious or other groups. One of her key commitments is to promote the enjoyment of cultural rights without any discrimination, including that based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, sexual orientation, gender identity, age, migrant status, disability or poverty. Committed to integrate both disability and gender perspectives into her work as emphasized by the terms of her mandate, she will also give particular focus to the equal cultural rights of women. Moreover, she plans to pay close attention generally to the cultural rights of those at heightened risk of human rights violations due to group or other status.

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[5] Lotte Hughes, "Nature, issues at stake and challenges", paper prepared for the "Negotiating Cultural Rights" conference, Copenhagen, November 2015.

[6] Emma Waterton and Laurajane Smith, "The recognition and misrecognition of community heritage", *International Journal of Heritage Studies*, vol. 16, Nos. 1-2 (Jan-March 2010), p. 8.

[7] Ibid., p. 5.

[8] Amartya Sen, "The uses and abuses of multiculturalism", *The New Republic*, 27 February 27 2006.

[9] Souleymane Bachir Diagne, "Keys to the 20th Century" (2001), cited in UNESCO, *70 Quotes for Peace* (2015), p. 36.

[10] Elsa Stamatopoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Leiden/Boston, Martinus Nijhoff, 2007), p. 258.

20. The Special Rapporteur regrets that rural cultures are often not recognized as cultures and risk being undervalued, despite the fact that nearly half of the world's population is rural. She will bear in mind the importance of the cultural rights of persons living in rural areas and be sensitive to bias towards urban contexts, what has been labelled "urban normativity".[11]

B. The legal basis of cultural rights

21. The legal basis for cultural rights can be found in numerous international human rights instruments. Explicit references include rights that expressly refer to culture. Implicit references include rights that, although not expressly referring to culture, may constitute an important legal grounding for the protection of cultural rights as defined above. The Special Rapporteur refers in this regard to the first report of her predecessor on this issue (see A/HRC/14/36, in particular paras. 11-20). Therefore, important legal bases for cultural rights are to be found not only in the International Covenant on Economic, Social and Cultural Rights, in particular articles 13-15, but also in the International Covenant on Civil and Political Rights, in particular in provisions protecting the right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association and peaceful assembly. Those rights are also key to ensuring the full realization of cultural rights. Indeed, cultural rights transcend the juncture of civil and political rights and economic and social rights and thus are important markers of interdependence and indivisibility.

22. The Special Rapporteur is mindful that various instruments of the United Nations Educational, Scientific and Cultural Organization (UNESCO) are relevant to her mandate, in particular those devoted to the protection of cultural diversity, the protection and promotion of the diversity of cultural expressions and the protection and safeguard of tangible and intangible cultural heritage. She observes in particular that, in accordance with article 5 of the Universal Declaration on Cultural Diversity, all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms. She intends to further exchange and develop working relationships with UNESCO, a process she has already commenced.

C. Universality of human rights, cultural rights and cultural diversity

23. The Special Rapporteur is unequivocally committed to the principle of the universality of human rights and to cultural diversity and, just like her predecessor, to recognizing and reinforcing the organic relationship between these two commitments. As UNESCO's 2009 *World Report* asserts, "recognition of cultural diversity grounds the universality of human rights in the realities of our societies".[12]

24. The Special Rapporteur identifies as key the following principles, which were recalled by the Council in its resolution 19/6. As enshrined in the Vienna Declaration and Programme of Action, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The Vienna Declaration and

[11] See e.g. Gregory Fulkerson and Alexander Thomas, eds., *Studies in Urbanormativity: Rural Community and Urban Society* (Lexington Books, 2013).

[12] UNESCO, *World Report: Investing in Cultural Diversity and Intercultural Dialogue* (2009), p. 225.

Programme of Action further reaffirms that "all human rights are universal, indivisible and interdependent and interrelated."

25. Moreover, cultural practices — or what are claimed to be cultural practices — must evolve when they constitute or lead to discrimination against women, including gender-based violence. Under article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women, States are required to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Similarly, the cultural explanations sometimes offered in the past for systematic racial discrimination or slavery are recognized as entirely incompatible with contemporary notions of human dignity. The Universal Declaration on Cultural Diversity (art. 4), further stresses that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. Therefore, not all cultural practices can be considered as protected in international human rights law and cultural rights may be subjected to limitations in certain circumstances.

26. The Special Rapporteur notes in this respect that, as stressed by the Committee on Economic, Social and Cultural Rights, limitations should be a last resort only and should be in accordance with certain conditions as established under international human rights law. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also stressed the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association (see the Committee's general comment No. 21, para. 16).

27. It is perhaps useful at this juncture to recall what cultural rights are not. They are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence. They are not a licence to impose identities or practices on others or to exclude them from either in violation of international law. They are firmly embedded in the universal human rights framework. Hence, the implementation of human rights must take into consideration respect for cultural rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms. This is the holistic vision of the Special Rapporteur, carrying on from that of her predecessor. She recalls article 5 (1) common to both of the covenants on human rights, which is all too often overlooked: "nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein".

28. While observing that reference to culture, religion and tradition has often been wrongly used to justify discrimination, Ms. Shaheed proposed a paradigm shift: from viewing culture as an obstacle to women's rights to emphasizing the need to ensure women's equal enjoyment of cultural rights. It is important to ensure the right of all women to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether, and to do so without fear of punitive action.

29. The Special Rapporteur believes that this innovative approach to the question of women's rights is valid for many other groups that are the victims of human rights violations justified in the name of tradition, religion, or culture. It paves the way for future similar work to be done concerning other subordinated groups, be it persons with disabilities, migrants, indigenous peoples, lesbian, gay, bisexual, transgender and intersex persons or people living in extreme poverty, for example.

D. Methodological commitments and challenges

30. The Special Rapporteur is committed to cooperation and dialogue with States and other stakeholders, including inter alia national human rights institutions, non-governmental organizations, intellectuals, artists, scientists and professionals in relevant fields, such as cultural heritage professionals, teachers and educators and representatives of relevant professional associations and the private sector.

31. The Special Rapporteur recognizes the need to centre the issue of State responsibility to respect, protect and fulfil cultural rights, but also to find innovative ways to speak directly about the impact on cultural rights of a wide range of non-State actors, and not only through the lens of State due diligence.

32. As mandated by the Council, the Special Rapporteur plans to consult with other relevant human rights bodies and mechanisms, in particular UNESCO, the treaty bodies, other special procedures and the Permanent Forum on Indigenous Issues. She would also like to interact with relevant regional mechanisms, such as the Unit on Economic, Social and Cultural Rights of the Inter-American Commission on Human Rights and the Working Group on Economic, Social and Cultural Rights of the African Commission on Human and Peoples' Rights.

E. Priorities for the mandate holder: 2015-2018

33. The present section identifies some urgent concerns of high priority based on the Special Rapporteur's initial consideration. However, it is also critical to leave room for flexibility to respond to emerging challenges and opportunities.

34. One priority theme that the Special Rapporteur will address in her first report to the General Assembly is the intentional destruction of cultural heritage, as exemplified by the demolitions of the Baalshamin Temple and the Temple of Bel in Palmyra in 2015. That issue is introduced below. The Special Rapporteur hopes to also take up the question of the destruction of cultural heritage in the name of "development" in the future, taking into consideration the particular impact on indigenous peoples.

35. In line with the emphasis placed on the issue by the Secretary-General and the United Nations High Commissioner for Human Rights, the Special Rapporteur also intends to produce a body of work on diverse forms of fundamentalism and extremism, which have now reached devastating proportions in many regions of the world and have had grave repercussions on cultural rights, resulting e.g. in widespread attacks on art and artists, on schools, on curricula, on women, on cultural practices and heritage and on freedom of thought, conscience and religion.[13] Conversely, science, education and culture, including

[13] See e.g. Secretary-General remarks at General Assembly presentation of the United Nations plan of action to prevent violent extremism, 15 January 2016 (noting inter alia the destruction of cultural institutions).

the arts, are important tools for combating fundamentalist ideologies that are detrimental to human rights and result in discrimination, violence and terrorism.

36. The Special Rapporteur would also like to emphasize the situation of artists, scientists and intellectuals at risk, who face a wide range of violations of their human rights around the world. It is urgent to recognize and address these risks, as the ability of such persons to fulfil their artistic, scientific and intellectual roles, including in the field of education, is essential for their own human rights but also for the cultural rights of all.

37. The Special Rapporteur also intends to continue addressing the right to artistic expression and creativity more broadly. Too many countries still practise censorship of the arts (see A/HRC/23/34). Financial crises and austerity measures have led to severe cuts in public spending, resulting in unemployment among artists and the closure of cultural institutions. Moreover, the Special Rapporteur expresses deep concern about the ongoing inequalities faced by women in the arts.[14]

38. In light of the epic 2015 refugee and migrant crisis that is ongoing, the Special Rapporteur believes it important to underscore that protecting the cultural rights of refugees and migrants, including women, is a critical aspect of ensuring their well-being, integration and rehabilitation after trauma. The Special Rapporteur is keen to find ways to address those questions.

39. The issue of public space is a central theme of the mandate that needs further exploration. Some of the main questions are whether access to public space is open to all, who curates the public space, whose voice is dominant and how public space can be used as a tool for mutual exchange and interaction. These are central questions for enabling people to live together in dignity.

40. As the Special Rapporteur would like to take a forward-looking approach, she hopes to examine the cultural rights of children and youth, both girls and boys, and education about the importance of cultural rights and cultural heritage. This is in keeping with the Convention on the Rights of the Child (art. 31), which recognizes the right to participate freely in cultural life and the arts. In its general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, the Committee on the Rights of the Child underscored the "poor recognition" of the rights contained in article 31, in particular with regard to girls, poor children, children with disabilities and indigenous children. This is a lynchpin issue where change can have a significant impact. As the Committee on the Rights of the Child insists, "participation in cultural and artistic activities are necessary for building children's understanding, not only of their own culture, but other cultures, as it provides opportunities to broaden their horizons and learn from other cultural and artistic traditions, thus contributing towards mutual understanding and appreciation of diversity" (para. 12 of general comment No. 17).

41. In keeping with this area of concern, the Special Rapporteur calls attention in particular to the need to safeguard education as a critical space for the fulfilment of children's cultural rights. She is keen to address the alarming phenomenon of targeted attacks against schools, including girls schools, and universities; curricular restrictions resulting from various forms of extremism or censorship; and the negative impacts of austerity and budget cuts. She is especially keen to explore the importance of arts and sciences education.

[14] She endorses the call for the collection of sex disaggregated data on women's participation in the arts, in Ammu Joseph, "Women as creators, gender equality" in UNESCO, *Reshaping Cultural Policies: A Decade Promoting the Diversity of Cultural Expressions for Development* (2015), p. 173.

42. The previous Special Rapporteur stressed that people can belong to multiple cultural groups and should be free to determine their own relationships with those groups. In accordance with this core principle, the Special Rapporteur would like to research the cultural rights of people with mixed or multiple identities, such as those bearing multiple nationalities or identifying as being from mixed ethnic or religious backgrounds. Many people in the world in themselves incarnate the principle of cultural diversity and are often forced into a framework of monolithic categories and conceptions of identity, in violation of their human rights.

43. The Special Rapporteur believes it essential to give particular consideration to the relationship between culture and new technology, which can be both a way of enhancing cultural rights and a serious challenge to them. Related areas include the globalization of exchanges and of information. Enormous imbalances have emerged in terms of access to and control of the means of information and communication.

44. Finally, the Special Rapporteur would like to emphasize her commitment to popularizing the message of cultural rights and her intention to use culture itself, including in the form of art and music as well as new media, as means for doing so. She recognizes in particular the need to reach out to young people, who are the future of cultural rights. We live in a world where youth are cultural trailblazers with new technology, virtual worlds and digital platforms, which are forging new cultural environments and forms. We live in a world where children may find death at school, at the hands of a classmate or an armed group, or while being at work in a factory rather than sitting on a school bench. We live in a world where a 20-year old can destroy a 2000-year-old temple. To paraphrase the words of poet Gabriela Mistral, "Many of the things we need can wait. But the child cannot. Right now is the time ... her senses are being developed ... To her we cannot answer, 'Tomorrow'. Her name is 'Today'".[15]

III. Intentional destruction of cultural heritage

45. In light of recent events that have shocked the conscience of the world, the Special Rapporteur addresses the issue of the intentional destruction of cultural heritage as an urgent priority. Herein she presents preliminary findings, and she will submit her final study to the General Assembly at its seventy-first session.

46. In future, the Special Rapporteur also hopes to explore other critical issues related to cultural heritage, including gender discrimination in accessing and designating heritage sites,[16] as well as destruction of cultural heritage in the name of development.

A. Importance of cultural heritage from a human rights perspective

47. Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and groups and their identity and development processes (see A/HRC/17/38 and Corr.1, para. 77). Cultural heritage is to be understood as the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations (ibid., paras. 4-5).

[15] Gabriela Mistral, "Llamado por el niño", in UNESCO, *70 Quotes for Peace*, p. 14.

[16] UNESCO, *Gender Equality: Heritage and Creativity* (2014), pp. 61-69.

48. While in the Special Rapporteur's view, specific aspects of heritage may have particular resonance for and connections to particular human groups (see A/HRC/17/38 and Corr.1, para. 62), all of humanity has a link to such objects, which represent the "cultural heritage of all [hu]mankind," in the words of the preamble to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (1954 Hague Convention). For example, in 2012, Ms. Shaheed noted that "the destruction of tombs of ancient Muslim saints in Timbuktu, a common heritage of humanity, is a loss for us all, but for the local population it also means the denial of their identity, their beliefs, their history and their dignity".[17] As Judge Cançado Trindade explained in his opinion related to the 2011 order of the International Court of Justice regarding the case of the Temple of Preah Vihear, "the ultimate *titulaires* of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole".[18] To quote Gita Sahgal, "heritage is humanity".

49. Cultural heritage includes not only tangible heritage composed of sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value, but also intangible heritage made up of traditions, customs and practices, aesthetic and spiritual beliefs, vernacular or other languages, artistic expressions and folklore. Both of these categories should be understood in broad and holistic terms. For example, tangible heritage includes not only buildings and ruins, but also scientific collections, archives, manuscripts and libraries, which are critical in preserving all aspects of cultural life, such as education, as well as artistic and scientific knowledge and freedom.

50. In her work, the first mandate holder established how the right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.

51. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to inter alia know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/HRC/17/38 and Corr.1, para. 79). Cultural heritage is a fundamental resource for other human rights also, in particular the rights to freedom of opinion and expression, freedom of thought, conscience and religion, as well as the economic rights of the many people who earn a living through tourism related to such heritage, the right to education and the right to development.

B. International legal standards on protection of cultural heritage

52. In paragraph 50 of its general comment No. 21, the Committee on Economic, Social and Cultural Rights recalled that States' obligations to respect and protect freedoms, cultural heritage and diversity are interconnected and that the obligation to ensure the right to participate in cultural life under article 15 of the International Covenant on Economic,

[17] Office of the United Nations High Commissioner for Human Rights, "'A very dark future for the local populations in Northern Mali', warn UN experts", 10 July 2012.

[18] Request for Interpretation of the Judgement of 15 June 1962 in the *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Separate Opinion of Judge Cançado Trindade, *ICJ Reports 2013*, p. 606, para. 114.

Social and Cultural Rights includes the obligation to respect and protect cultural heritage in all its forms and of all groups.

53. Numerous other international instruments protect cultural heritage. The member States of UNESCO have adopted, in addition to a number of declarations and recommendations, the Convention concerning the Protection of the World Cultural and Natural Heritage (1972); the Convention on the Protection of the Underwater Cultural Heritage (2001); and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003). The widespread support for the 1972 and 2003 conventions demonstrates the general agreement on the need to preserve and safeguard cultural heritage. Although these instruments do not necessarily take a human rights approach to cultural heritage, in recent years a shift has taken place from the preservation and safeguard of cultural heritage as such to the protection of cultural heritage as being of crucial value for human beings in relation to their cultural identity.

54. Because destruction of cultural heritage often results from armed conflict, whether as so-called collateral damage or due to deliberate targeting, a special protection regime governs its protection in times of conflict. The core standards include the Hague conventions of 1899 and 1907 and, most importantly, the 1954 Hague Convention and the 1954 and 1999 protocols thereto.

55. The 1954 Hague Convention, requires States parties to respect cultural property and to refrain from any act of hostility directed against it or any use of it likely to expose it to such acts, subject only to imperative military necessity (art. 4). In the future, the Special Rapporteur would like to explore the impact of the military necessity caveat on this provision, as experts have raised concerns about the scope of its application and its effects.

56. In addition, the Hague Convention obligates States to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property (art. 4). They are to consider using refuges or safe havens for cultural property where relevant (art. 8). Another especially critical provision of this Convention is the requirement under article 3 that States prepare in peacetime for protection of heritage in conflict. In accordance with article 28, parties must prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach. The Second Protocol to this Convention strengthens this aspect, by requiring the codification of a criminal offence, including responsibility for higher command (art. 15 (2)).

57. In light of concerns about the ongoing attacks on cultural property following the entry into force of the Convention and the First Protocol, the Second Protocol was developed to enhance protection. It narrows the "military necessity" waiver such that it applies only when "no feasible alternative [is] available to obtain a similar military advantage" and imposes standards of proportionality to avoid or minimize collateral damage.

58. The Special Rapporteur notes with concern that many States have not adhered to these standards, in particular the Second Protocol, which only has 68 parties. Moreover, some experts suggest that even States that have done so may not have enacted adequate implementing legislation or fulfilled their obligations. For example, the Special Rapporteur was dismayed to learn from cultural heritage professionals that, despite the many examples of destruction of cultural heritage contrary to international treaties, there have reportedly not been any national prosecutions on the basis of the 1954 Convention. However, "the

proper national implementation of the Hague Convention is a *condicio sine qua non* for the effective respect for cultural property in the event of armed conflict".[19]

59. The Special Rapporteur recalls that many provisions of the Hague Convention are deemed to rise to the level of customary international law,[20] binding both States not party to the Convention as well as non-State actors. She further concurs with experts that "the prohibition of acts of deliberate destruction of cultural heritage of major value for humanity" rises to the level of customary international law and is a norm which is supported by "a general *opinio juris*".[21]

60. In the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage adopted in 2003, the international community reaffirms its commitment to fight against the intentional destruction of cultural heritage in any form so that it may be transmitted to the succeeding generations. States are unequivocally instructed to prevent, avoid, stop and suppress intentional destruction, wherever such heritage is located. The Special Rapporteur affirms the importance of the 2003 UNESCO Declaration and calls for its full implementation.

61. Importantly, the 2003 UNESCO Declaration asserts that States should adhere to the 1954 Hague Convention and the two protocols thereto if they have not done so, and strive toward "coordinated application" of these international instruments. The Special Rapporteur underscores that the 2003 UNESCO Declaration requires States to cooperate to protect cultural heritage.

62. An additional concern for the Special Rapporteur is the fact that many standards focus on States' obligations, which are crucial but not the only relevant issues. There are important provisions that can help address the role of non-State actors, such as article 19 of the Hague Convention, which applies to non-international conflicts, as well as article 8 of the Rome Statute and article 16 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts. The latter prohibits any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and applies to both State and non-State actors in the context of non-international armed conflicts. The Special Rapporteur believes that, in addition to tackling the role of States, attention must also be paid to the robust use of these standards – and developing other strategies – for holding non-State actors to account and preventing their engaging in destruction. This is especially important in contexts where the exercise of State due diligence may be impossible. One added value of a human rights approach is the reminder that, in the words of the Universal Declaration of Human Rights, every individual and every organ of society has a duty to promote respect for human rights.

63. Individual criminal responsibility arises from serious offences against cultural heritage.[22] According to the Rome Statue of the International Criminal Court, intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable

[19] Jan Hladik, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: some observations on the implementation at the national level", *MUSEUM International*, No. 228, Protection and Restitution (2005), p. 7.

[20] Francesco Francioni and Federico Lanzerini, "The destruction of the Buddhas of Bamiyan and international law", *European Journal of International Law*, vol. 14, No. 4 (2003), p. 619.

[21] Ibid., p. 635.

[22] See, e.g., Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 3 (d).

purposes, historic monuments and hospitals provided they are not military objectives in either international or non-international armed conflict may be tried as a war crime.[23]

64. In addition, the destruction of cultural property with discriminatory intent can be charged as a crime against humanity and the intentional destruction of cultural and religious property and symbols can also be considered as evidence of intent to destroy a group within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide (see A/HRC/17/38 and Corr.1, para. 15). In 2014, the Office on Genocide Prevention and Responsibility to Protect developed a new Framework of Analysis for Atrocity Crimes: a Tool for Prevention to assess the risk of genocide, war crimes and crimes against humanity, in which destruction of property of cultural and religious significance is considered a significant indicator in the prevention of atrocity crimes.[24]

65. Following the adoption by the Security Council of its resolution 2199 (2015) and as a response to the increase in deliberate attacks on cultural heritage as a weapon of war, UNESCO has developed a strategy to strengthen its capacity to respond urgently to cultural emergencies. The strategy explicitly refers to human rights and cultural rights and develops actions to be taken to reduce the vulnerability of cultural heritage before, during and after conflict. It also includes rehabilitation of cultural heritage as an important cultural dimension, which can strengthen intercultural dialogue, humanitarian action, security strategies and peacebuilding.[25] UNESCO recently convened a group of experts to explore whether the notion of the "responsibility to protect", as found in paragraphs 138-140 of resolution 60/1 in which the General Assembly adopted the 2005 World Summit Outcome, could be applied in the context of cultural heritage. The expert group recognized that the intentional destruction and misappropriation of cultural heritage can constitute war crimes and crimes against humanity and can indicate genocidal intent, and thus may fall within the scope of the "responsibility to protect".[26]

C. Intentional destruction of cultural heritage: cultural warfare and "cultural cleansing"

66. The Special Rapporteur has been appalled by recent events in which cultural heritage has been intentionally targeted and destroyed in both conflict and non-conflict situations. In the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, "intentional destruction" is defined as "an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience". Examples include cases publicly raised by the Special Rapporteur's predecessor, such as the destruction of Sufi religious and historic sites in Libya in 2011 and 2012 and the torching by armed groups of the Ahmed Baba Institute, one of the most important libraries in Timbuktu, Mali, as their occupation of the city was ending in January 2013, as well as the destruction of mausoleums, which are important in cultural practice in that city. These attacks, which deeply affected the local populations, are just a few examples and reports are forthcoming from a number of regions of the world of a similar pattern of attacks by States and non-State actors.

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[23] Rome Statute of the International Criminal Court, art. 8 (2) (b) (ix) and (e) (iv).

[24] United Nations, *Framework of Analysis for Atrocity Crimes: a Tool for Prevention* (2014).

[25] Reinforcement of UNESCO's Action for the Protection of Culture and the Promotion of Cultural Pluralisms in the Event of Armed Conflict, UNESCO documents 38 C/49 and 197/EX/10.

[26] International Expert Meeting on the Responsibility to Protect as applied to the Protection of Cultural Heritage, recommendations, 26-27 November 2015, Paris.

67. Unfortunately, there is a long human history of such acts as iconoclasm and biblioclasm in all regions of the world, whether in wars, revolutions or waves of repression. However, in the early twenty-first century, a new wave of deliberate destruction is being recorded and displayed for the world to see, the impact magnified by widespread distribution of the images. Such acts are often openly proclaimed and justified by their perpetrators. This represents a form of cultural warfare being used against populations, and humanity as a whole, and one which the Special Rapporteur condemns in the strongest possible terms. The Special Rapporteur shares the view of UNESCO that these acts of intentional destruction sometimes constitute "cultural cleansing". They take the terrorization of a population to a new level by attacking even its history and represent an urgent challenge to cultural rights, one which requires rapid and thoughtful international response.

68. The preamble of the 2003 UNESCO Declaration stresses that "cultural heritage is an important component of cultural identity and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights". In recent cases, as in their historical antecedents, the objects in question have clearly been targeted not in spite of the prohibitions on attacking cultural heritage and notwithstanding the value of the objects in question, but precisely because of that value and those norms.

D. Towards a human rights approach to the intentional destruction of cultural heritage

69. In responding to intentional destruction of cultural heritage, it is critical to employ a human rights approach: there are many human rights implications. As rightly noted by one cultural rights expert, "despite the rich international normative framework created under the aegis of UNESCO over the decades, the question is largely not being addressed by the international community as a question of human rights generally, or of cultural rights in particular".[27] This must change. As her first priority area of thematic work, the Special Rapporteur aims to develop such an approach.

70. The Special Rapporteur's predecessor noted the added value of a human rights approach: beyond preserving and safeguarding an object or a manifestation in itself, the human rights approach to cultural heritage obliges one to take into account the rights of individuals and communities in relation to such object or manifestation and, in particular, to connect cultural heritage with its source of production (see A/HRC/17/38 and Corr.1, para. 2).

71. The importance of having access to one's own cultural heritage and to that of others has been emphasized by the Committee on Economic, Social and Cultural Rights in its general comment No. 21. As stressed by the Committee therein, the obligations to respect and to protect freedoms, cultural heritage and cultural diversity are interconnected. It is impossible to separate a people's cultural heritage from the people itself and their rights.

72. Just as the intentional destruction of cultural heritage has a devastating impact on cultural rights, so too protecting cultural heritage can have a positive impact on morale and rights in situations of conflict or repression. "A nation stays alive when its culture stays alive" is the motto of the National Museum of Afghanistan, where some 2,750 pieces were destroyed by the Taliban in 2001.

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[27] Elsa Stamatopoulou, Memorandum submitted to the Special Rapporteur in the field of cultural rights, 12 December 2015.

73. A critical, related question concerns the protection of the defenders of cultural heritage who are at risk, such as those who have curated, preserved and protected the National Museum of Afghanistan through decades of war and worked tirelessly to reconstruct the damaged pieces that could be saved. They include cultural heritage professionals, such as contemporary figures like Khaled al-Asaad, the Syrian archaeologist who died defending Palmyra in August 2015 and many others who today labour in obscurity and danger, and also historical figures, such as the heroic staff of the Hermitage Museum in what is now Saint Petersburg, Russian Federation, who risked their lives between 1941 and 1944 so that invaluable collection would be, as one expert phrased it, saved for humanity.[28] Such figures may include ordinary people like those in Northern Mali who reportedly hid manuscripts beneath the floorboards of their homes to protect them during the 2012 occupation or those who sought to peacefully protest the destruction of Sufi sites in Libya despite intimidation.

74. A human rights perspective on the protection of cultural heritage must emphasize the human rights of cultural first responders – those on the frontlines in the struggle to protect it. They are the guardians of the cultural heritage of local groups, and indeed of all humankind, and thus critical players in the defence of cultural rights. They often put their safety and that of their families on the line to carry out this work. States must respect their rights and ensure their safety and security, but also provide them, including through international cooperation, with the conditions necessary to complete their work, including all needed material and technical assistance, and offer them asylum when that work becomes too dangerous.

75. The Special Rapporteur believes that, in many circumstances, defenders of cultural heritage should be recognized as cultural rights defenders and therefore as human rights defenders and that they should be afforded the rights and protections that status entails. As the Office of the United Nations High Commissioner for Human Rights has noted, to be a human rights defender, a person can act to address any human right (or rights) on behalf of individuals or groups.[29]

76. In the destruction of heritage and in its protection, new media is a game changer, capable of magnifying the impact of the initial destructive acts, but also of enhancing the means to mitigate the damage caused, such as through digitization. These tools should be widely made available to cultural heritage professionals.

77. Experts have emphasized that there is a significant overlap between tangible and intangible heritage. As mentioned above, attacks on tangible and intangible cultural heritage are interconnected. A human rights approach assists in making these connections. For example, when mausoleums and ancient Islamic manuscripts were being destroyed by armed groups in northern Mali, various forms of cultural practice were also under attack, including religious practices, singing and music. Local populations were greatly affected, in an integrated way, by assaults on both forms of cultural heritage. Meanwhile, ancient languages and religious practices, tied to sacred spaces and structures and cultural landscapes of northern Iraq and the Syrian Arab Republic, are being lost as the populations are displaced and objects, texts and historic structures are destroyed.

78. Another contribution of the human rights approach is its emphasis on accountability and combating impunity. The Special Rapporteur has been closely watching developments in the groundbreaking case of *Prosecutor v. Ahmad Al Faqi Al Mahdi* in the International

[28] Sergey Varshavsky and Boris Rest, *Saved For Humanity: The Hermitage during the Siege of Leningrad 1941-1944* (Aurora Art Publishers, 1985) (originally in Russian).

[29] See www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx.

Criminal Court regarding cultural heritage destruction in Mali.[30] She hopes to see other similar prosecutions in future and believes the emphasis on remedies and bringing to justice in human rights law are important tools.

79. A human rights approach also embraces prevention. Preventive action and education on the importance of cultural heritage and cultural rights are vital aspects of the endeavour to protect and safeguard cultural heritage. One critical aspect of the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage is the requirement that all States engage in awareness-raising with regard to these standards.

80. For effective prevention, it is crucial to understand why deliberate destruction of cultural heritage takes place. It is sometimes difficult to distinguish between ideological destruction and looting for economic reasons and both overlapping sets of practices must be tackled, including in countries where the markets for looted artefacts are located. Deliberate destruction may happen for a variety of reasons, including as a strategy to destroy the morale of the enemy and terrorize local populations or as a means to eradicate other cultures, in particular of the vanquished so as to facilitate conquest.[31]

81. In many recent examples, destruction is part of the "cultural engineering" sought by diverse extremists who, rather than preserving tradition as some claim, seek to radically transform it, erasing what does not concur with their vision. They seek to end traditions and erase memory, in order to create new historical narratives affording no alternative vision to their own. Ending these forms of destruction requires tackling the fundamentalist ideology motivating them itself, in accordance with international standards, in particular through education about cultural rights, cultural diversity and heritage. Journalist Mustapha Hammouche, in assessing recent extremist attacks on cultural spaces noted, "In this global war, it is not our differences which motivate … hatred, but what we share: humanity and humanism itself".[32]

82. Acts of deliberate destruction are often accompanied by other large-scale or grave assaults on human dignity and human rights. As such, they will have to be addressed in the context of holistic strategies for the promotion of human rights, and peacebuilding. The right of access to and enjoyment of cultural heritage of others in a non-stereotypical way is of utmost importance in post-conflict situations. This was particularly visible during the first mandate holder's mission to Bosnia and Herzegovina (see A/HRC/25/49/Add.1). Peacemaking and peacebuilding processes should include the protection, repair and memorialization of cultural heritage with the participation of those concerned and the promotion of intercultural dialogue regarding cultural heritage (see A/HRC/17/38 and Corr.1, para. 12).

83. In the face of large-scale killings or assaults on the security of persons, attacks on cultural heritage may seem less important, and, understandably, there may be conflicting

[30] *The Prosecutor v. Ahmad Al Faqi Al Mahdim, Situation in the Republic of Mali*, Public Court Records: Pre-Trial Chamber I. See www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0112/related-cases/ICC-01_12-01_15/court-records/chambers/ptcI/Pages/1.aspx.

[31] Patty Gerstenblith, "Protecting Cultural Heritage in Armed Conflict: Looking Back, Looking Forward" in *Symposium: War and Peace: Art and Cultural Heritage Law in the 21st Century*, 4 March 2008, *Cardozo Public Law, Policy and Ethics Journal*, vol. 7, No. 3 (2009), p. 677.

[32] Mustapha Hammouche, "Guerre contre l'humanité", *Liberté*, 15 November 2015 (translated from French).

priorities. But, as a Haitian sculptor asserted: "the dead are dead. We know that. But if you don't have the memory of the past, the rest of us can't continue living".[33]

84. This introduction is the Special Rapporteur's first step in addressing the issue and she looks forward to continuing her research in this vital area. In conclusion, she emphasizes that the destruction of cultural heritage is a human rights issue. The approach to stopping intentional destruction of tangible and intangible cultural heritage needs to be holistic, encompassing all regions, contemplating both prevention and punishment, targeting acts by State and non-State actors, in conflict and non-conflict situations. We must respond urgently, but also take the long view.

85. In a poem entitled "The smothered murmurs of history", poet Saleh Baddiari, himself a refugee from extremist violence, expressed the anguish many have felt after recent acts of cultural demolition produced what he called "ruins upon ruins." He gave voice to the fear that, if unchecked, there will be more destruction to come:

> The people of the new millennium are determined to reduce their ruins to the dust of ruins…
> Palmyra collapses on its own rubble.
> Petra will follow, along with Nineveh and Nippur.
> Alexandria and Heliopolis, blindfolded, await their turn to return to dust.[34]

It is up to us all to make sure that does not come to pass – anywhere.

IV. Conclusions and recommendations

A. Conclusions

86. **Over the past six years, cultural rights have gained significantly in legitimacy and standing. Their realization is now recognized as key to the overall implementation of universal human rights. The previous Special Rapporteur undertook an important and rich first round of exploration of cultural rights. However, much remains to be done. The new Special Rapporteur aims to carry out this work in cooperation with States, relevant human rights and intergovernmental bodies and a diverse range of non-governmental stakeholders.**

87. **The Special Rapporteur will pay particular attention to the relationship between individuals and collectivities and the terminology used to refer to different typologies of human groups. She will carry forward her predecessor's commitment to the principle of universality of human rights and to recognizing and reinforcing the organic relationship between universality and cultural diversity. Cultural rights and cultural diversity are not tantamount to cultural relativism. Moreover, cultural diversity exists within each group and society and individuals may simultaneously participate in multiple cultural groupings. The rights of all individuals to take part in cultural life must be understood in light of these complex realities.**

88. **The Special Rapporteur has identified several issues of urgent concern she intends to pursue. She has been particularly shocked by recent events in which tangible cultural heritage has been intentionally targeted and destroyed in conflict**

[33] Cited in Marc Lacey, "Cultural riches turn to rubble in Haiti quake", *New York Times*, 23 January 2010.

[34] Salah El Khalfa Beddiari, forthcoming in *Les murmures étouffés de l'Histoire* (Éditions Beroaf, 2016) (translated by the Special Rapporteur with permission of the poet).

and non-conflict situations. She condemns these acts, which constitute an attack on cultural life itself. In the present report, the Special Rapporteur began developing the components of a human rights approach to the issue of intentional destruction of cultural heritage; she will explore this issue further in her first report to the General Assembly. Her approach is holistic, contemplating both prevention and punishment, targeting acts by State and non-State actors, in conflict and non-conflict situations and of tangible and intangible heritage.

89. The Special Rapporteur concurs with her predecessor that the right of access to and enjoyment of cultural heritage forms part of international human rights law. Cultural heritage is linked to human dignity and identity. Moreover, while specific aspects of tangible heritage may have particular resonance for and connections to particular groups, all of humanity has a link to such objects, which represent the cultural heritage of all humankind. Accordingly, all States have an obligation to respect and protect cultural heritage in accordance with international standards, to ensure accountability for acts of intentional destruction of such heritage; and to cooperate to protect cultural heritage.

B. Preliminary recommendations

90. The Special Rapporteur calls upon States to:

(a) Respect, protect and fulfil cultural rights in the context of implementing the full range of human rights and ensure the exercise of these rights is firmly embedded in the universal human rights framework;

(b) Ensure the right of all individuals to practise their culture, including with others. This includes ensuring non-discrimination in the enjoyment of cultural rights across all categories protected by international human rights law and upholding the rights of dissenting or disempowered individuals within any groups;

(c) Ensure the right of all persons, including women, to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage, and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether and to do so without fear of punitive actions. States should similarly ensure this right with respect to other groups, including persons with disabilities, migrants, indigenous peoples, lesbian, gay, bisexual, transgender and intersex persons and persons living in extreme poverty.

91. With regard to the issue of the intentional destruction of cultural heritage, the Special Rapporteur recommends that States:

(a) Respect and protect cultural heritage; the right of everyone to use and enjoy cultural heritage should be limited only as a last resort and in compliance with international law;

(b) Ratify the core cultural heritage conventions, including the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1954 and 1999 protocols thereto, and urgently enact implementing legislation so as to enable full implementation of these conventions;

(c) Take appropriate legislative, administrative, educational and technical measures to prevent, avoid, stop and suppress intentional destruction of cultural heritage, in line with the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage. In this regard, States should:

(i) Prepare in peacetime for any possible threat to cultural heritage in time of war, including by documenting the cultural heritage within their jurisdiction, as well as employing digital technologies and new media in this regard wherever feasible;

(ii) Allocate sufficient budgetary resources, both at the international and national levels, to the protection of cultural heritage;

(iii) Provide international technical assistance to facilitate prevention of the intentional destruction of cultural heritage;

(d) Train fully military forces in all relevant rules concerning the protection of cultural heritage in armed conflict;

(e) Take all steps necessary to facilitate prosecutions of those responsible for intentional destruction of cultural heritage, at the national or international level, in accordance with relevant international standards;

(f) Respect the rights of cultural heritage professionals on the frontlines of the struggle against intentional destruction and ensure their safety and security; work at the international and national level to provide them with the conditions necessary to complete their work, including material and technical assistance; and grant them asylum when necessary. Everyone has a duty to respect the rights of cultural heritage professionals and anyone alleged to have harmed them must be brought to justice in accordance with international standards.

92. **The Special Rapporteur further recommends that States, experts and international and non-governmental organizations:**

(a) Consider how to enhance the application of existing international legal standards regarding the prohibition of intentional destruction of cultural heritage and the obligation to respect cultural rights to non-State actors;

(b) Recognize the protection of cultural heritage and of cultural rights as a critical component of humanitarian assistance, including in conflicts;

(c) Investigate the use of funds from looting and the illicit traffic of cultural objects for the financing of terrorism and consider requiring increased due diligence with regard to cultural objects being sold from at-risk regions;

(d) Systematically include cultural awareness, the safeguarding, restoration and memorialization of cultural heritage and the respect and protection of cultural rights in the mandate of peacekeeping missions, in peacebuilding policies and initiatives and in post-conflict reconciliation;

(e) Promote, coordinate and provide resources for the international exchange of best practices in the field of protection of cultural heritage and of the right to access and enjoy cultural heritage.